



Newsletter

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Audit Committee Reviews 10 Audit Reports

The Legislative Audit Committee met in Helena on Nov. 4-5 to review recent audits of state agencies and programs. The audits and findings are summarized below.

Combined Healthcare Information and Montana Eligibility System—Enterprise Architecture (CHIMES-EA)

An information systems audit (15DP-01) of Combined Healthcare Information and Montana Eligibility System—Enterprise Architecture (CHIMES-EA) at the Department of Public Health and Human Services found that the CHIMES-EA system is largely functioning as expected with regard to client analysis and benefit issuance. However, the department also needs to make improvements in several areas to increase the system's accuracy and efficiency and improve user perception of system functionality. Specifically, the department needs to strengthen a number of processes for monitoring system performance, improve the process to repair system defects, strengthen the review of certain benefit overpayments, improve communication, and strengthen the review of user access to the system.

Review of Child Abuse and Neglect Investigations

A performance audit reviewing child abuse and neglect investigations (14P-11) identified that the Department of Public Health and Human Services needs to address inconsistent documentation, limited supervisory oversight, and a lack of management information related to child abuse and neglect reports. The report also found that the department needs to comply with state law regarding investigative time frames and to resolve inconsistencies between state law and its investigative protocol for making determinations of child abuse or neglect.

Railroad Safety

A performance audit of railroad safety (14P-13) found that the Public Service Commission is not actively pursuing rail safety and does not have adequate safety inspector coverage for the state. The Montana Disaster and Emergency Services Division is not meeting all of its statutory responsibilities related to coordinating emergency management and ensuring that local emergency response agencies can respond to a train derailment with hazardous materials. The audit found that the Mon-

tana Department of Transportation is adequately managing highway-rail crossing safety within resources.

State Real Property Management

A performance audit of state real property management (14P-07) found that the state of Montana does not have a comprehensive, accurate inventory of its nontrust real property holdings and identified that a more centralized process for real property transactions and a stronger centralized real property management strategy would make the state's management of this strategic asset more efficient and effective.

Department of Public Health and Human Services

A financial compliance audit report of the Department of Public Health and Human Services (15-14) includes 10 recommendations primarily related to improving internal controls and compliance with federal laws and regulations. The report also includes a recommendation about the department not receiving funds in a timely manner as a result of a conflict of interest and excessive access to a department computer system.

Montana State University

A Montana State University compliance audit (15-13) report makes 12 recommendations to the university, five of which are related to internal control deficiencies over and noncompliance with federal regulations governing the student financial assistance programs. Under the programs, the university spent approximately \$249 million in federal monies for financial aid awards to students in fiscal years 2014 and 2015. Other recommendations relate to documentation of review procedures performed for research and development expenses, noncompliance with policy requirements within the operations of the Museum of the Rockies, and deficiencies in internal controls related to accounting and financial reporting for university-owned collections at the Museum of the Rockies.

University of Montana

A University of Montana compliance audit (15-12) report contains four recommendations to the university. One recommendation addresses noncompliance with exit counseling and grace period notice requirements for Perkins student loan borrowers. Another recommendation addresses the need for more timely reconciliation between amounts reported as disbursed to students for direct loans and Pell grants and the amounts actually disbursed. The remaining two recommendations relate to the need to improve documentation on the review of grant financial activity required by UM-Missoula policy and questions costs associated with an equipment purchase.

Department of Transportation

A Montana Department of Transportation financial compliance audit (15-17) report contains five recommendations to

the department about compliance with state laws and policies, internal control deficiencies, and compliance with federal reporting requirements.

Department of Commerce

A Department of Commerce financial compliance audit (15-16) report makes two recommendations related to the Section 8 housing choice voucher program. The audit found the department was not in compliance with federal regulations and department policy related to the program, which led to more than \$60,000 in questioned federal costs.

Medical Legal Panel

A Montana Medical Legal Panel financial compliance audit (15C-05) resulted in no recommendations.

Follow-Up Reports

The committee also heard follow-up reports regarding the following performance audits:

- Childhood Immunization Requirements in Montana (15SP-16).
- Universal Systems Benefit Program (16SP-02).
- Management of Oil & Gas and Commercial Leasing on State Trust Lands (15SP-15).

More Information

The Legislative Audit Division provides independent and objective evaluations of the stewardship, performance, and cost of government policies, programs, and operations. The division is responsible for conducting financial, performance, and information system audits of state agencies and programs, including the Montana University System.

For more information, call the Legislative Audit Division at 406-444-3122 or visit <http://leg.mt.gov/audit>.

Fraud Hotline

To report suspected improper acts committed by state agencies, departments, or employees, call the division's fraud hotline at 800-222-4446 or 406-444-4446 in Helena.

CFHHS Delves into Mental Health, Dementia Studies

The Children, Families, Health, and Human Services Interim Committee heard detailed presentations on children's mental health, guardianship, and dementia as members honed in on their study topics during a two-day meeting in Billings last month.

The committee also heard updates on the use of new appropriations for mental health services, reviewed a proposal for

training psychiatric students in Montana, and toured the Billings Community Crisis Center as well as areas of the Billings Clinic and St. Vincent Healthcare.

HB 422: Children's Mental Health Outcomes

Under House Bill 422, the committee is charged with developing legislation for a pilot project to improve outcomes in the children's mental health system and tie payment for providers to achievement of those outcomes.

As part of its information-gathering process for the study, the committee focused on learning more about evidence-based practices (EBPs) for mental health treatment and measuring the outcomes of treatment.

Timothy Conley, a Missoula consultant who has evaluated outcomes for a number of social services programs, explained to the committee that EBPs are treatment models that have undergone thorough scientific review and have been found effective in reaching certain types of outcomes. He noted that many mental health clinicians choose therapies that have worked well for them or that they think will work well with a certain client. Conley told the committee that rather than providing "treatment as usual," EBPs require a more systematic, standardized model of treatment that must be followed closely to obtain the outcome supported by the model.

Conley also outlined several challenges to remaining true to the EBP model, including staff turnover, the costs of ongoing training, and the natural tendency of practitioners to vary their treatment approach to meet the circumstances. He stressed that ongoing evaluation is needed of both the way in which the EBP is being implemented and whether the treatment is resulting in the desired outcome.

Scott Sell, the developer of an evidence-based practice known as Parenting with Love and Limits, stressed that clinicians using an EBP must be monitored and must receive frequent feedback to ensure that they are using the model in the way it was designed. He demonstrated the model's computerized "dashboard," which evaluates not only the patient's progress but also how well the therapist is using the treatment model.

A panel of Montana mental health providers — Jim FitzGerald of Intermountain, Coralee Goni of the Rimrock Foundation, and Peter Degel of Youth Dynamics Inc. — discussed the pros and cons of putting evidence-based practices into effect in the field. They pointed to challenges similar to those that Conley outlined in terms of ongoing costs, as well as challenges related to collecting the data needed to evaluate outcomes. They noted that large mental health providers are able to commit the money and staff resources to using an EBP with fidelity but that it may be more difficult for smaller providers to do so.

Zoe Barnard, chief of the DPHHS Children's Mental Health Bureau, noted that some efforts to put EBPs in place have failed because of the high cost of sustaining the practice. She suggested that the committee consider other, less expensive strategies known as "promising practices," which are supported by evidence but have not been as rigorously reviewed as EBPs.

Committee members discussed whether the language of HB 422 must be construed as requiring evidence-based practices or whether it allows for the pilot project to target certain outcomes and require providers to prove that they have attained those outcomes. Members will gather more information before narrowing the focus of the study.

SJR 22: Guardianship and Alzheimer's Disease

The committee's Senate Joint Resolution 22 study originally encompassed only topics related to guardianship laws and services. However, the committee decided in June to expand the study to include Alzheimer's disease and other dementias.

At the November Billings meeting, the committee began the Alzheimer's portion of its study with several presentations. Members heard about the following:

- The prevalence, causes, stages, and treatments for Alzheimer's disease, from Lynn Mullooney of the Montana chapter of the Alzheimer's Association and Dr. Patricia Coon of the Billings Clinic.
- The community-based services and types of facilities that provide care for dementia patients, from Todd Wood of the Area II Agency on Aging in Roundup, Kent Burgess of St. John's Lutheran Ministries in Billings, and Glenda Oldenburg of the DPHHS Addictive and Mental Disorders Division.
- The experiences and thoughts of family caregivers as shown through a survey conducted for AARP Montana, shared by panelist Kathleen Burke of Billings and several individuals who provided public comment.
- The activities of the Montana Alzheimer's/Dementia Work Group, which is preparing a plan for addressing Alzheimer's disease in the state.

For the guardianship portion of the SJR 22 study, committee members learned about the types of services available at the local level for individuals who need court-appointed guardians because they are unable to handle their own affairs. Representatives of the Area II Agency on Aging, Yellowstone County Guardianship Council in Billings, and Western Montana Chapter in Missoula described the guardianship services they offer to residents in the areas they serve.

All of the speakers said their programs serve primarily low-income individuals who have no family members or other

parties to act as guardians. They also said that because of limited resources, the programs currently serve fewer than 20 people a year. One of the programs limits its guardianships to between five and eight people.

SB 418: Legislative Mental Health Investments

Senate Bill 418 requires the committee to monitor the use of nearly \$19 million in appropriations made in 2015 for new community-based mental health services. Glenda Oldenburg of DPHHS provided a written report that included the following information:

- Sixty-nine individuals were placed in emergency detention in four communities during the first quarter of fiscal year 2016, and 30 of them (fewer than half) were admitted to the Montana State Hospital at the end of the short-term detention. The rest remained in the community.
- One individual entered voluntary, short-term inpatient treatment in the community while an involuntary commitment petition was suspended, successfully avoiding placement at the state hospital.
- Three individuals who were serving sentences at the Montana State Hospital because of crimes they committed while mentally ill were placed in community group homes through payment of an enhanced rate that is \$69 per day higher than the regular group home rate.
- Ninety-two individuals received support for housing and other services needed to return them to the community, including one person adjudicated as guilty but mentally ill who was placed at a prerelease center.
- DPHHS expanded the number of mental health home- and community-based services waiver slots by 20 and filled 16 of the slots.
- The department issued a Request for Proposal for a vendor to provide peer support services.

DPHHS Monitoring

DPHHS Director Richard Opper updated the committee on a range of topics, including the following:

- The status of the Medicaid expansion authorized by SB 405.
- The appointment of advisory committees to study ways to improve the delivery of Medicaid-funded health care services and review the agency's practices in child abuse and neglect cases.
- Plans to lease a facility at Galen to house mentally ill offenders who are being evaluated or treated before trial or who have been convicted and sentenced to the custody of DPHHS.

The 2015 Legislature approved funding for FY 2017 to operate a forensic mental health facility for offenders sentenced to the department's custody. However, the Legislature did not pass a related infrastructure bonding bill that would have made money available to add beds to the forensic wing of the Montana State Hospital in Warm Springs.

DPHHS announced in September that it had leased a building formerly used as a youth detention facility in Galen. The agency plans to open the facility in February, using a \$4 million appropriation for operational costs to staff the facility. Responding to questions by several committee members, Opper said he thinks the use of the \$4 million is consistent with the Legislature's original intent even though the Legislature didn't specifically fund the construction costs of new beds.

Next Meeting

The committee will meet on Jan. 11 in Room 137 of the Capitol in Helena at a time to be determined. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sue O'Connell, committee staff.

Committee Website: www.leg.mt.gov/cfhhs

Committee Staff: soconnell@mt.gov or 406-444-3597

Sentencing Commission Focuses on Criminal Justice System Background

The Commission on Sentencing spent two full days in mid-November gathering background information about the Montana criminal justice system's structure and workings, including best practices to design, implement, and maintain programs to help reduce crime. State and county criminal justice officials, as well as subject matter experts, joined staff from the Council of State Governments (CSG) Justice Center to share their expertise with the 15 commissioners.

Key Concepts and Panel on Assessment

Carl Reynolds from CSG opened the meeting by defining and reviewing several key concepts for the commission's work, including justice reinvestment, evidence-based practices, recidivism, and risk. Steve Allen, also from CSG, then kicked off a panel on risk and needs assessments by discussing factors that might increase a person's risk of reoffending, including antisocial behaviors, antisocial friends or peers, and antisocial personality patterns. He outlined possible interventions that have helped reduce the risk of reoffending and discussed how criminal justice agencies have developed tools to measure that risk.

Commissioner Jennie Hansen, a probation and parole officer with the Montana Department of Corrections in Billings,

and another DOC staff member, Megan Coy, shared how the department developed and is implementing its risk and needs assessments: the Montana Offender Reentry Risk Assessment (MORRA) for male offenders and the Women's Risk and Needs Assessment (WRNA) for female offenders. Dave Armstrong, CEO of Alternatives Inc. in Billings, then highlighted the various community corrections facilities across the state and the assessment instruments they use to measure offenders' risk levels and needs.

Offender Behavioral Health

After the discussion of risk and needs assessments, the commission broached another issue that also touches on many aspects of the criminal justice system: offenders' behavioral health needs (including mental health and substance abuse treatment) and various programs that can be provided to address those needs. Steve Allen stressed the complexity of working with behavioral health needs in the offender population, highlighted what research has shown to be effective responses to reduce recidivism in these offenders, and noted the importance of assessing programs for quality and effectiveness. He then outlined the next steps for CSG's work analyzing current behavioral health practices in Montana.

Next, Dr. Timothy Conley, who operates a research and consulting firm and has assessed many of Montana's behavioral health programs in correctional settings, spoke more specifically about those programs. He also noted the importance of measuring outcomes and assessing program effectiveness.

Rounding out the behavioral health panel was Jessica Connel, a licensed addiction counselor at the Montana State Prison, who talked about programs offered at the prison, various gaps in treatment services or barriers to provision of services, and steps DOC is taking to address those gaps and remove barriers. Finally, Julie Prigmore, the bureau chief of the Mental Health Services Bureau at the Montana Department of Health and Human Services, updated the commissioners on recent grants DPHHS has made to support and expand various jail diversion and mental health programs in the counties.

Parole Board

After a full first morning, the commissioners kept up the pace in the afternoon, learning from commission member Rep. Margaret MacDonald (D-Billings), who is also a past presiding officer of the Law and Justice Interim Committee, about the LJIC's recent study of the Montana Board of Pardons and Parole and the parole system. She also discussed statutory changes made by the 2015 Legislature in response to the LJIC study recommendations. As part of the parole topic, the commissioners heard from the current presiding officer of the parole board, Helena attorney Mark Staples, about how

the board conducts its business and hearings and how board members are trained.

Community Supervision

The presentation portion of the first day wrapped up with a segment dedicated to effective practices for community supervision of offenders, including swift, certain, and proportional sanctions for violations of supervision conditions. Chris Fisher from CSG used a system checklist and video clips to demonstrate best practices in community supervision that a corrections entity could use to help reduce recidivism. Next, Kevin Olson, the administrator of DOC's probation and parole division, presented information about the implementation of swift and certain sanctions in Montana.

Public Comment

The commissioners closed the first meeting day by taking public comment from various Montanans, many of whom have successfully completed methamphetamine treatment in the NEXUS program in Lewistown or alcohol addiction treatment at the Warm Springs Addiction Treatment and Change program (WATCh).

South Dakota's Justice Reinvestment Experience

On the second day of the meeting, the commissioners heard from Sheriff Kevin Thom from Pennington County, South Dakota, which contains Rapid City. Sheriff Thom spoke about South Dakota's recent justice reinvestment process, including how the state's criminal justice stakeholders worked to design solutions to address budget and jail capacity concerns raised by county officials.

Treatment Courts

The second panel of the day focused on treatment courts, which are used by judges nationwide and in Montana to provide an alternative to incarceration for certain offenders, typically nonviolent offenders with a serious substance addiction. Montana Chief Justice Mike McGrath discussed the importance of the Montana network of treatment courts, and the state's court administrator, Beth McLaughlin, presented information on the courts' budgets and recent treatment court strategic planning conducted by the judicial branch. Judge Ingrid Gustafson from the 13th Judicial District (Yellowstone County), herself a member of the commission, then walked her fellow commissioners through the nitty-gritty of drug court structures and operations, best practices for these courts, and various statistics related to Montana's drug courts.

Local Law Enforcement Perspective

The final panel of the meeting was dedicated to understanding the perspectives of local law enforcement officials, including county attorneys and sheriffs of urban and rural counties.

First, Karen Chung from CSG reviewed justice reinvestment changes made by other states that helped create “win-win” situations for local and state criminal justice entities. Leo Gallagher, the county attorney of Lewis and Clark County, discussed the jail populations of several Montana counties and recent changes to the state rate paid to counties for housing state prisoners. Gallagher also outlined several options for changes he felt the commission could consider to reduce pressures on county jails, especially those in urban counties.

Next, commissioners listened to fellow commission member Donna Whitt, sheriff of Toole County, as she covered the realities of policing in a rural county and operating a small jail. Sheriff Chuck Curry followed up with his perspective as sheriff of one of the larger counties in the state, Flathead County. To round out the panel, DOC director and commission member Mike Batista mentioned recent work DOC has done to address the pressures of an increasing prison population at both the men’s and women’s prisons as well as in the caseloads of DOC’s probation and parole officers. He stressed the agency’s focus on reentry, noting that most offenders in state custody will return to communities around the state at some point.

After holding a press event to highlight the commission’s work and then taking more public comment, the commissioners spent time hearing about CSG’s next steps in the justice reinvestment process. The commissioners also discussed the following topics of interest for future study:

- Data collection and sharing.
- Sentencing statutes, including those establishing mandatory minimums.
- Coordination with task forces studying the state’s judicial districts and public defender operations.
- The parole system.
- Reintegration of offenders to American Indian communities.
- Possible drawbacks of reliance on risk assessment tools.

Public Comment Email Established

The commission has established an email address to receive comments from the public about its work, including any suggestions for future study or recommendations. The email address is SentencingComments@mt.gov.

Comments sent to the account will be compiled and delivered to each commissioner. They become part of the commission’s permanent record. Written comments submitted to the commission via email are considered a public record pursuant to Montana law and may be subject to public disclosure under the right-to-know provisions of the Montana Constitution.

Next Meeting

The commission will meet on March 1-2 in Room 172 of the Capitol in Helena at a time to be determined. For more information on the commission’s activities and upcoming meeting, visit the commission’s website or contact Rachel Weiss, commission staff.

Commission Website: www.leg.mt.gov/cos

Commission Staff: rweiss@mt.gov or 406-444-5367

Economic Affairs Committee Focuses on Montana State Fund, Other Budgets

The Dec. 1-2 meeting of the Economic Affairs Interim Committee will be heavy on numbers as members look at the Montana State Fund budget along with the budgets of licensing boards and the costs of air ambulances in Montana. The wide-ranging meeting topics also include a look at the Division of Banking and Financial Institutions and the Department of Livestock’s budget. The meeting report will be in the January issue of *The Interim*.

Next Meeting

The committee will meet starting at 10 a.m. on Dec. 1 in Room 137 of the Capitol in Helena. The meeting will continue at 8 a.m. on Dec. 2. For more information about the committee’s activities and upcoming meeting, visit the committee’s website or contact Pat Murdo, committee staff.

Committee Website: www.leg.mt.gov/eaic

Committee Staff: pmurdo@mt.gov or 406-444-3594

Education and Local Government Committee to Continue Studies and Monitor Education Policy

At its upcoming meeting in January, the Education and Local Government Interim Committee will continue work on its three assigned studies. The studies deal with the following topics:

- County road easements on state trust land.
- Local fire and emergency services.
- Youth concussion laws.

In addition, Montana State Library representatives will report on Montana Land Information Grant recipients, and committee members will learn more about proposals to locate private medical schools in Bozeman and Missoula.

Agency monitoring duties will include updates from the Office of Public Instruction on the progress of the negotiated

rulemaking committees for arts and health content standards, as well as other statewide education policy matters. The committee's work plan also includes an update on the Montana Digital Academy and the work of the School Funding Interim Commission, which will have met in the days preceding ELG's meeting.

Next Meeting

The committee will meet on Jan. 14-15 in Room 102 of the Capitol in Helena at a time to be determined. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Leanne Kurtz, committee staff.

Committee Website: www.leg.mt.gov/elgic

Committee Staff: lekurtz@mt.gov or 406-444-3593

ETIC Members Travel to Spokane

Energy and Telecommunications Interim Committee members recently participated in a meeting with Washington state legislators about the future of Montana's Colstrip coal-fired electric generating units. Members are also currently preparing for the next meeting of the committee in January.

Colstrip Units 1 and 2

Selected members of the Energy and Telecommunications Interim Committee and the Environmental Quality Council traveled to Spokane, Washington, in late October to discuss Washington state's planned legislation to facilitate closure of Montana's Colstrip Generating Units 1 and 2. The Washington Legislature meets in 2016.

The Oct. 28 meeting was hosted by the Washington Legislature's Senate Energy, Environment and Telecommunications Committee, which is chaired by Sen. Doug Ericksen (R-Ferndale). The ETIC in September selected Sen. Duane Ankney (R-Colstrip) and Sen. Cliff Larsen (D-Missoula) to attend the meeting. The EQC selected Sen. Jim Keane (D-Butte) and Sen. Rick Ripley (R-Wolf Creek).

During its 2015 legislative session, the Washington Legislature considered legislation establishing a process for an electrical company to petition the Washington Utilities and Transportation Commission for approval of a plan for an electrical company to acquire and decommission one or more coal-fired generating units and to secure ratepayer funds to pay for environmental remediation. Puget Sound Energy, which owns 50 percent of Units 1 and 2, pursued the legislation amid growing pressure from the state utility commission and other organizations about the environmental impacts and economic costs of coal-fired generation. The legislation was geared toward facilitating Puget Sound Energy's acquisition of Talen Energy's share of Colstrip Units 1 and 2. Talen owns the other 50 percent of Units 1 and 2.

In response to the Washington legislation, Sen. Ankney and Sen. Keane introduced Senate Bill 402 during Montana's 2015 session. The bills under consideration in both Washington and Montana did not pass. However, Puget Sound Energy intends to bring its legislation again during Washington's 2016 session.

During the meeting in Spokane, Puget Sound Energy representatives discussed regulatory and voter initiative efforts in Washington to limit carbon emissions. The representatives said that the company is trying to mitigate risks and that, in Washington, less coal is less of a liability. They indicated that their legislative efforts are also directed at protecting Washington ratepayers.

Sen. Ericksen of Washington noted that a dialogue with Montana did not occur prior to the introduction of legislation during Washington's 2015 session, and he encouraged Washington and Montana to have a "reasoned and rational discussion" about Colstrip Units 1 and 2. Montana legislators stressed the economic and social impacts that closing the Colstrip units would have on both Rosebud County and the state of Montana. The legislators encouraged Washington to cooperate with Montana, to consider the impacts to the employees at the facilities and associated mine, and to take into account the overall economic impacts to Montana. Sen. Ericksen indicated that when new legislation is introduced in 2016, he would like to again hear from Montana legislators.

In addition to the four Montana senators in attendance, representatives of Montana's Public Service Commission and the Montana Governor's Office also participated in the meeting.

At its meeting on Jan. 15, the ETIC likely will review Washington's Colstrip-related legislation and may provide comments.

Net Metering Efforts

At its Jan. 15 meeting, the ETIC also will dig into its net metering interim assignment. In June 2015, the committee sent Montana's regulated utilities, rural electric cooperatives, and renewable energy industry a set of specific data requests. In September, the committee got its first look at analysis of the data provided by stakeholders.

A review of the analysis reveals there is little agreement among the stakeholders regarding whether net metering creates a cost shift between net metered customers and customers who do not net meter. There is even less consensus on how to quantify the factors needed to make a determination about cost shifting. The questionnaires and responses are available on the committee's website.

At the January meeting, the committee may discuss whether it should continue the discussion among stakeholders about the costs and benefits of net metering or shift the focus of the

discussion toward cost recovery. The committee could refocus the study on how best to recover a utility's fixed costs (transmission and distribution) from all ratepayers in a way that doesn't discriminate and that encourages policy goals (incentives) the committee determines are appropriate.

Also at the January meeting, the committee will examine the economic development impacts of net metering systems by reviewing revenue generated by businesses that sell and install net metered systems in Montana, analyze employment statistics for businesses that sell and install net metered systems, and review tax revenue generated by these systems.

Next Meeting

The committee will meet at 8 a.m. on Jan. 15 in Room 172 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sonja Nowakowski, committee staff.

Committee Website: www.leg.mt.gov/etic

Committee Staff: snowakowski@mt.gov or 406-444-3078

EQC Takes No Action on Game Damage Rules

At its Nov. 16 meeting, the Environmental Quality Council opted to take no action to delay the implementation of new rules for the Department of Fish, Wildlife and Parks' game damage program after reviewing revisions to the rule proposal during a conference call.

The council first reviewed the rule proposal at its September meeting as part of a broader evaluation of FWP's wildlife conflict management. FWP proposed the game damage rule changes in response to a legislative performance audit, which raised myriad administrative issues earlier this year.

After the September council meeting, FWP made two primary changes to the proposed rules:

- Capping the percentage of hunters that could be selected by landowners to participate in a game damage hunt.
- Prohibiting the use of landowner-selected hunters if antlered animals are to be harvested.

Focus for January: HJR 13

At its upcoming meeting in January, the council will continue its House Joint Resolution 13 study of road management on federal land with a focus on recreational access. Sponsored by Rep. Kerry White (R-Bozeman), HJR 13 tasks the council with the following:

- Assessing road closures on federal lands over the past 35 years.

- Identifying landlocked parcels of public land.
- Evaluating deer and elk trends in relation to limited access to federal lands.

Also during the January meeting, the council will review hunting access and nongame, threatened, and endangered species programs within FWP and the minerals management program within the Department of Natural Resources and Conservation.

Next Meeting

The council will meet on Jan. 13-14 in Room 317 of the Capitol in Helena at a time to be determined. For more information on the council's activities and the upcoming meeting, visit the council's website or contact Joe Kolman, committee staff.

Committee Website: www.leg.mt.gov/eqc

Committee Staff: jkolman@mt.gov or 406-444-3747

Legislative Council Discusses Strategic Initiatives

At its meeting on Nov. 16, the Legislative Council discussed several strategic planning initiatives:

- Legislative oversight of the Executive Branch.
- Legislative budget authority.
- TVMT.

Oversight of the Executive Branch

Legislative staff provided various examples of how different interim and administrative committees exercise oversight of executive branch agencies. Examples are posted on a webpage dedicated to oversight. The webpage is accessible from the "Committee Topics" link on the Legislative Council's homepage.

Legislative Budget Authority

The council's discussion of legislative budget authority concentrated on the council's role in the overall budget process and legislative branch budget process. The discussion included legislator and staff pay and legislative programs included in the House Bill 1 and House Bill 2 funding bills during legislative sessions.

TVMT

Legislative staff presented briefings on the background, history, budget, contracts, and long-term planning for TVMT. The council will seek a meeting with the city of Helena and Lewis and Clark County regarding the future of the franchise agreement with Charter Communications. Legislative staff

will also be working on a survey of legislators about what they envision for the future of TVMT. Additional surveys for the public may also be in the works.

Uniform Law Commission Membership

The Legislative Council appointed state District Court Judge Gregory Pinski as one of Montana's members on the Uniform Law Commission. The vacancy was created when Edwin Eck accepted a lifetime member position on the commission. Other Montana members include Karen Powell, Jonathon Byington, and ex officio member Todd Everts. The Uniform Law Commission promotes uniformity of law among the states on subjects where uniformity is desirable and practicable. Commission membership parameters are prescribed in statute.

Land Transfer

The Legislative Council received information on a proposed transfer of state property, the Chinook Armory and Maintenance Shop, from the Department of Military Affairs to Blaine County. Pursuant to its duty under section 77-2-351, MCA, the Legislative Council adopted a motion acknowledging that consultation with the appropriate legislative committee occurred and that the council concurs with the proposed transfer. The land transfer proposal will proceed to the State Board of Land Commissioners, which meets on Dec. 21.

Next Meeting

The council will meet on Feb. 9 at a time and place to be determined. Anticipated agenda items include the following topics:

- Bills on legislator pay from the 2015 session.
- Additional research on grants of rulemaking authority.
- TVMT.
- Remote meeting possibilities.
- Caucus and orientation planning.
- Proposed guidelines for legislator appointments and constituent services accounts.

For more information on the council's activities and upcoming meeting, visit the council's website or contact Susan Byorth Fox, council staff.

Council Website: www.leg.mt.gov/legcouncil
Council Staff: sfox@mt.gov or 406-444-3066

Task Force on State Public Defender Operations

The Task Force on State Public Defender Operations will meet on Dec. 10 to continue examining Office of the State Public

Defender operations. Several topics will be discussed:

- The American Bar Association's *Ten Principles of a Public Defense Delivery System*.
- Legal and policy guidelines affecting OPD and contract attorneys.
- Determining client eligibility.
- Attorney conflicts of interest.
- Oversight and evaluation of contract attorneys.
- Staff attorneys providing pro bono representation.
- Financial, personnel, management, and performance information and data.
- A comparison of public defense systems in several other states and jurisdictions.

Next Meeting

The task force will meet on Dec. 10 in Room 102 of the Capitol in Helena. The meeting is tentatively scheduled to begin at 8 a.m. For more information on task force activities and the upcoming meeting, visit the task force's website or contact Dave Bohyer, task force staff.

Task Force Website: www.leg.mt.gov/tfspdo

Task Force Staff: dbohyer@mt.gov or 406-444-3592

School Funding Commission to Hold Three-Day Meeting

The School Funding Interim Commission established under Senate Bill 128 (2015) is scheduled to meet for the second time on Jan. 11-13. The 16-member commission is tasked with reassessing the needs and costs of the basic system of free quality public elementary and secondary schools and recommending to the 65th Legislature any necessary changes to the state's school funding formula.

The commission requested background information in advance of the January meeting, and materials are being posted to the commission's website as they become available.

Next Meeting

The commission will meet on Jan. 11-13 at the Capitol in Helena at a time to be determined. For more information on the commission's activities and upcoming meeting, visit the commission's website or contact Pad McCracken, commission staff.

Commission Website: www.leg.mt.gov/sfc

Commission Staff: padmccracken@mt.gov or 406-444-3595

State Administration Committee To Conduct Poll on Campaign Finance Rules

At its Nov. 17 meeting, the State Administration and Veterans' Affairs Interim Committee failed to renew its objection to delay adoption of proposed campaign finance rules but received 23 letters from legislators objecting to 16 of the proposed rules. The objections mean that the committee must conduct a poll of the entire Legislature about whether the rules are contrary to legislative intent. The committee also began its study of personal information ownership under House Joint Resolution 21 and received briefings on the FY 2015 actuarial valuation results for the public employee retirement systems.

Campaign Finance Rules

A motion to renew the committee's Aug. 19 objection to proposed campaign finance rules failed on a tie vote, which meant the committee could no longer delay adoption of the rules. However, because 23 legislators sent letters of objection to 16 of the rules proposed by the commissioner of political practices, the committee is required by law to conduct a poll of all 150 legislators on whether each of the 16 rules conforms to legislative intent. If a majority of both houses of the Legislature vote that a rule conflicts with legislative intent, "the proposed rule or adopted rule must be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity (2-4-404, MCA)."

Conduct of Legislative Poll

At a conference call meeting on Nov. 24, the committee decided on several administrative procedures about how the poll on the campaign finance rules will be conducted:

- Ballots will be mailed to legislators on Dec. 1. The ballot will consist of two separate pages with 16 separate questions — a question on each of the rules objected to.
- Included in the mailing will be a cover letter, a copy of the proposed rules (prior to changes made by the COPP after public comment),¹ a copy of the statutes that the COPP cites as

being implemented by the rule, a copy of the COPP's letter of justification for the rules, and a return envelope.

- Additional reference materials will be available online through a link provided on the committee's homepage: www.leg.mt.gov/sava.
- Ballots must be received by the Legislative Services Division no later than Dec. 21. The voted ballots may be returned by mail, in person, by fax, or by email. Each page of the ballot must be signed by the legislator, and any corrections must be initialed by the legislator.
- The poll results will be sent to the secretary of state and published with the rule when the adoption notice is published in the MAR.
- The Dec. 21 deadline for return of the ballots enables the adoption notice and the poll results to be published in the MAR on Jan. 8. The rules become effective on the date the adoption notice is published.²

HJR 21 Study of Personal Information Ownership

The committee heard from several expert witnesses about current law and practice concerning how personal consumer, financial, and health information is collected, stored, and distributed. Current federal and state law is a patchwork of sector-specific laws primarily concerned with privacy and security rather than ownership rights. Ownership rights related to personal information are currently a nebulous area of law. The committee adopted a study plan to further examine the ownership legal theory and identify what other states may be doing to define what has been termed "a bundle" of ownership rights to provide consumers with more control over their "owned" information.

Public Pension Plan Actuarial Valuation Results

The committee was briefed on the results of the FY 2015 actuarial valuations of the public employee retirement systems. The accompanying table summarizes these results and compares the June 30, 2015, results with the valuation results from the previous fiscal year. As the table shows, the funding

¹The language of section 2-4-403, MCA, states that objections triggering a poll are to a "proposed" rule. Notice of a proposed rule is provided to parties through publication in the Montana Administrative Register (see 2-4-302, MCA). In this case, the COPP provided SAVA with a list of additional changes that it intended to adopt after public comment, but those additional changes were not officially noticed in the MAR. The current statutory scheme does not provide a mechanism to poll the Legislature on changes to a proposed rule contemplated by an agency after the official proposal notice is published in the MAR but before the rule is adopted.

²The COPP's rules were adopted on Nov. 24 when the adoption notice was sent to the secretary of state. The rules are not effective until the adoption notice is published in the MAR. The MAR is published about every two weeks. Typically, the secretary of state will publish an adoption notice in the next MAR, which in this case would be published on Dec. 10. However, the COPP informed the secretary of state and SAVA that the COPP was willing to have publication of the adoption notice delayed until no later than the Jan. 22 MAR publication date to allow time for the legislative poll results to be known before the rules are published and become effective.

status for each of the retirement systems improved, except for the system covering the volunteer firefighters. The funding status of volunteer firefighters' system declined slightly because of a bill enacted in 2015 that provided a slight increase in the monthly benefit for eligible volunteer firefighters.

Retirement System	June 30, 2014		June 30, 2015	
	Percent Funded	Years to Amortize	Percent Funded	Years to Amortize
Public Employees—Defined Benefit Plan	74.4%	29.3	76.2%	27.2
Teachers	65.5%	28	67.5%	26
Game Wardens and Peace Officers	83.7%	Does not amortize	84.4%	Does not amortize
Highway Patrol Officers	63.9%	30.3	65.1%	28.5
Judges	155.1%	0	163.6%	0
Sheriffs	81.3%	Does not amortize	82.6%	Does not amortize
Municipal Police Officers	63%	19.6	66%	18.3
Firefighters Unified	71.8%	11.3	75.5%	9.7
Volunteer Firefighters	82.4%	5.1	75.4%	9.3

Next Meeting

The committee will meet on Feb. 10 at the Capitol in Helena at a time to be determined. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sheri Scurr, committee staff.

Committee Website: www.leg.mt.gov/sava

Committee Staff: sscurr@mt.gov or 406-444-3596

mittee on Indian Affairs approved S. 1419 for consideration by the full U.S. Senate.

S. 1419 seeks to amend the Elementary and Secondary Education Act of 1965 to establish a grant program to support schools using a Native American language as the primary language of instruction. The legislation would appropriate \$5 million in the first year of the program. Funding could be used to develop, maintain, improve, or expand programs, including pre-K through postsecondary programs.

The 2015 Montana Legislature enacted Senate Bill 272, the Cultural Integrity Commitment Act, sponsored by Sen. Windy Boy, to encourage school districts to create Indian language immersion programs. SB 272 provides a funding formula and a one-time-only biennial appropriation of \$45,000.

Next Meeting

The committee will meet in either March or April while visiting the Fort Peck and Rocky Boys

reservations. Agendas and meeting materials for each of the visits and meetings will be posted on the committee's website approximately two weeks in advance of the visits. For more information on the committee's activities and upcoming meetings, visit the committee's website or contact Hope Stockwell, committee staff.

Committee Website: www.leg.mt.gov/tribal

Committee Staff: hstockwell@mt.gov or 406-444-9280

State-Tribal Relations Committee Deadlocks on Support for Federal Native Language Immersion Bill

A majority of the State-Tribal Relations Committee did not agree to send letters of support to the Montana Congressional delegation regarding S. 1419, the Native Language Immersion Student Achievement Act, sponsored by U.S. Sen. Jon Tester.

The STRC met on Nov. 4 by conference call to consider the letters. A motion to approve them failed on a 3-3 vote.

Sen. Jonathan Windy Boy, presiding officer of the STRC, requested the letters on Oct. 21 after the U.S. Senate Com-

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WOTUS in 1,000 Words: A Quick Guide for Legislators

by Jason Mohr, Research Analyst
Legislative Environmental Policy Office

In 2011, the Environmental Protection Agency began drafting the Clean Water Rule to untangle a regulatory mess: how to clearly define the rivers, lakes, streams, ponds, and wetlands subject to Clean Water Act regulation. These waterways are known as “waters of the United States,” or WOTUS. The rule has earned both support and opposition at the local, state, and national levels. More than 1 million conservationists, developers, environmentalists, farmers, homeowners, ranchers, elected officials, and other interested parties — including many in Montana — have commented on the rule.

For more than 150 years, the U.S. Congress was primarily concerned with regulating waterways for commerce. Over time, that regulatory reach evolved to include the Clean Water Act of 1972, which states that it is the nation’s policy to “restore and maintain the chemical, physical, and biological integrity of the nation’s waters.” This simple phrase has been difficult to administer, and the Clean Water Rule was meant to alleviate confusion.

But, since the rule was finalized in late August, opposition has sharpened. Montana Attorney General Tim Fox has joined 12 other states protesting the rule.¹ Two subsequent orders by federal judges in North Dakota and Ohio prevented the rule from taking effect. Congress is proposing its own rules through a bill sponsored by U.S. Sen. John Barrasso (R-Wyoming).²

This article offers a WOTUS guide for Montana legislators by describing the rule, outlining where it may — or may not — affect this state, and identifying how Montana agencies may — or may not — be subject to the rule.

What Is Regulated Under the Clean Water Act?

The Clean Water Act created three main regulatory programs:³

- A permit system for those discharging pollutants into waters of the United States, also known as **section 402 permits** or **discharge permits**. These permits are typically for city wastewater treatment plants and industrial users. The EPA granted the Montana Department of Environmental Quality the authority to issue these permits.
- A permit system for those placing dredge or fill material into a waterway, also known as **section 404 permits**, which are issued by the U.S. Army Corps of Engineers.⁴ These permits are for a variety of applicants, particularly private landowners.
- A process for establishing **water quality standards** for the nation’s waterways. These standards help inform permissible pollutant levels for discharge permits. The EPA granted authority to the DEQ to develop these standards.

Figuring out which permit is necessary also requires knowing what waters are subject to jurisdiction. If the water is jurisdictional — that is, if it is a “water of the United States” — a construction company, home owner, government agency, or other entity may need one of the permits described previously. But thanks to many decisions by the Corps of Engineers and many court cases, this is also where the regulatory confusion begins.

Under the Clean Water Act, four categories of waters have been considered jurisdictional:

- navigable waters⁵
- interstate waters⁶
- territorial seas⁷
- impoundments⁸

¹The other states include Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, and Wyoming.

²S.1140: Federal Water Quality Protection Act.

³Section 401 of the Clean Water Act requires federal permit applicants to obtain state or tribal certification for a permitted discharge.

⁴Except in Michigan and New Jersey.

⁵The definition of “navigable” is determined by federal and state court tests, including tests of evidence of actual commerce and evidence of the susceptibility of useful commerce. Navigable waters are defined in the Clean Water Act as “waters of the United States.” In Montana, navigable waters include lower portions of the Kootenai, Missouri, and Yellowstone rivers.

⁶Rivers that span state or national boundaries, such as the Clark Fork, Milk, and Tongue rivers.

⁷Montana has no waters of this category.

⁸An example is the Fort Peck reservoir.

Certain wetlands and tributaries next to the waters in these four categories may or may not be jurisdictional. For example, exemptions exist for waste treatment systems and previously converted cropland.

Over time, the Corps of Engineers has both expanded and contracted its jurisdiction. Most recently, the *SWANCC* (2001) and *Rapanos* (2006) decisions limited the EPA's regulatory reach while adding even more regulatory uncertainty.⁹ The EPA notes that "protection for about 60 percent of the nation's streams and millions of acres of wetlands has been confusing and complex" since these rulings.¹⁰

What Did the Clean Water Rule Propose?

The Clean Water Rule keeps the four original categories of jurisdictional waters and adds four more. The four additional categories rely on a legal test of "significant nexus."¹¹

The additional categories include the following:

- **Tributaries** to traditional navigable waters, interstate waters, or territorial seas, if the tributaries have a bed, bank, and high-water mark. These tributaries could be perennial, intermittent, or ephemeral streams.
- **Adjacent waters**, or those that border, are contiguous to, or neighbor certain jurisdictional waters. Adjacent waters beyond 100 feet of the ordinary high-water mark or outside 1,500 feet of the 100-year floodplain are not jurisdictional. Neither are waters being used for established "normal farming, silviculture, and ranching activities."¹²
- **Isolated waters and other waters**, which may be jurisdictional after a "significant nexus" determination. These include waters with unique ecological features¹³ and those beyond "adjacent waters"¹⁴.

At this point, it may seem that every drop of water in Montana could presumably be a "water of the United States" and therefore subject to federal jurisdiction. However, as indicated earlier, waters used in normal farming, forestry, and ranching activities are exempt. The Clean Water Rule also exempts the following:

- most ditches
- irrigated dry land
- artificial lakes and ponds
- swimming pools
- ornamental waters
- certain erosional features
- puddles
- groundwater
- stormwater control features
- wastewater recycling structures

How Might This Rule Dispute Affect Montana?

Of the three major regulatory areas covered by the Clean Water Act — discharge permits, dredge-and-fill permits, and water quality standards — the state of Montana has primacy over two. The DEQ's Water Protection Bureau issues discharge permits, and the Water Quality Planning Bureau of the DEQ sets relevant water quality standards.

The EPA and the DEQ have said that the new "WOTUS" definition does not affect existing state processes. However, the Clean Water Rule may force the Corps of Engineers to make more jurisdictional determinations for dredge-and-fill permits.

Meanwhile, the fate of the Clean Water Rule may be determined in federal court or by the U.S. Congress.

The lawsuit by Attorney General Fox and the 12 other states mentioned earlier asserts that the EPA exceeded its authority, violated state sovereignty, and ignored procedures in the National Environmental Policy Act and the federal Administrative Procedure Act. U.S. Sen. Barrasso's bill (S.1140) provides its own definition for "WOTUS."

At this point, no immediate changes to state law appear necessary. This may change as a result of the Montana Legislature's Water Policy Interim Committee's research into whether the state should assume primacy over the section 404 permitting program. Having the state assume this program — after the EPA's blessing — would require legislation and perhaps an appropriation.

⁹ *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 US 159 (2001); *Rapanos v. U.S.*, 547 US 715 (2006).

¹⁰ U.S. Environmental Protection Agency, "Factsheet: Clean Water Rule," www.epa.gov/cleanwaterrule/clean-water-rule-factsheets.

¹¹ Language from *Rapanos v. U.S.* proposes a "significant nexus" determination, which is a test of whether a water "significantly affects the chemical, physical, and biological integrity" of a downstream, jurisdictional water. This significant effect must be more than "speculative or insubstantial."

¹² As these terms are used in 33 U.S.C. 1344(f).

¹³ The specific waters with unique ecological features include prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands.

¹⁴ As long as the water is within 4,000 feet from the high-tide line or the ordinary high-water mark of a jurisdictional water.